UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/507
27 February 1991

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 507

Case No. 531: FAYACHE

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto, President; Mr. Jerome Ackerman, First Vice-President; Mr. Ahmed Osman, Second Vice-President;

Whereas at the request of Mohamed L. Fayache, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 12 January 1990, the time-limit for the filing of an application to the Tribunal;

Whereas, on 7 December 1989, the Applicant filed an application, containing pleas that read in part as follows:

"II. PLEAS

...

and consequently, the Tribunal is respectfully requested:

1. To order the promotion of the Applicant to the D-1 level effective 17 November 1986 and his appointment to the first appropriate D-1 vacancy in UNCTC [United Nations Centre on Transnational Corporations].

2. To fix a compensation of one year base salary to be paid to Applicant as compensation for the injury sustained by him should the Secretary-General decide not to implement the order to promote him retroactively as in para. 1 above.

3. In any case to order the immediate promotion of Applicant to the D-1 level in any appropriate post of the Secretariat in New York."

Whereas the Respondent filed his answer on 24 May 1990;

Whereas the Applicant filed written observations on 20 September 1990;

Whereas, on 16 October 1990, the Group on Equal Rights for Women in the United Nations, a staff representative body, requested, under article 19 of the Rules of the Tribunal, to intervene in the case;

Whereas, on 17 October 1990, the Tribunal put questions to the Applicant and the Respondent and requested the production of certain documents;

Whereas, on 24 October 1990, the Respondent submitted a statement in support of the Group on Equal Rights for Women's request and on the same date the Tribunal rejected the request;

Whereas, on 25 October 1990, the Respondent produced certain confidential documents requested by the Tribunal and asked that they not be transmitted to the Applicant in order to protect the confidentiality of the Appointment and Promotion Board (APB) proceedings;

Whereas, on 29 October 1990, the Respondent submitted additional answers to the questions put to him by the Tribunal;

Whereas, on 29 October 1990, the Applicant provided written answers to questions put to him by the Tribunal on 17 October 1990;

Whereas, on 30 October 1990, the Executive Director of the United Nations Centre on Transnational Corporations submitted a written statement, containing answers to some of the questions put to the Respondent by the Tribunal on 17 October 1990;

Whereas, on 1 November 1990, the Tribunal heard the parties at a public hearing;

Whereas, on 16 November 1990, the Tribunal decided to adjourn its consideration of the case until its next session to be held in 1991;

Whereas, on 12 December 1990, the President of the Tribunal, pursuant to article 10 of the Rules of the Tribunal, put questions to the Respondent who on 31 December 1990, 7 and 8 January 1991, provided answers thereto, as well as to further questions put by the Tribunal at the public hearing;

Whereas, on 28 January 8, 11 and 13 February 1991, the Applicant submitted answers to questions put to him by the Tribunal, as well as comments on the Respondent's submissions.

Whereas, on 26 February 1991, the Tribunal decided not to take into account the confidential documents produced by the Respondent on 25 October 1990, concerning the APB proceedings and to return them to him;

Whereas the facts in the case are as follows:

Mohamed L. Fayache entered the service of the United Nations on 7 July 1976. He was initially offered a one-year fixed-term appointment as a Transnational Corporations Officer at the P-4, Step 1 level, at the United Nations Centre on Transnational Corporations (UNCTC). The Applicant's appointment was then extended for three successive fixed-term periods of two years, through 7 July 1983.

During 1983, the Applicant filed a complaint with the Panel on Discrimination and Other Grievances in the United Nations Secretariat (Panel on Discrimination), against Mr. Sidney Dell, then Head of his Department, arguing essentially that he had been "systematically denied promotion, partly because the former and present Executive Directors of UNCTC favoured the promotion of other candidates, one with less seniority and lower grades and the other from another Department (UNDP), also with less seniority". In his report on the case to the Assistant Secretary-General for Personnel Services (OPS), the Co-ordinator of the Panel on Discrimination recommended that the Applicant be granted a probationary appointment and that he be considered for a promotion to the P-5 level.

On 10 October 1983, UNCTC recommended that the Applicant's appointment be converted to a probationary appointment and administrative action was taken in this regard with effect from 7 July 1983.

On 24 October 1983, the Assistant Secretary-General, OPS, informed the Applicant that the Secretary-General had approved the recommendation of the Appointment and Promotion Board (APB) for the addition of his name to

the 1983 Senior Officer, P-5 Promotion Register. The Applicant had filed a recourse against a prior decision by the Secretary-General not to include his name in the Register.

On 21 December 1983, Mr. Sidney Dell wrote to the Assistant Secretary-General, OPS, stating that he had enquired of the Chairman of the APB as to the grounds on which the APB had put the Applicant's name on the P-5 Promotion Register. According to Mr. Dell, the Chairman of the APB had asserted that the APB had acted on the basis of the Panel on Discrimination's report. Mr. Dell characterized the report as a "one-sided document which, since it did not conform to the [Staff Regulations and] Rules, should not have been submitted to, or accepted by, the Appointment and Promotion Board". Since "no valid report existed", Mr. Dell believed "that the action of the Board was itself invalid".

The Applicant's promotion to the P-5 level was finally implemented on 24 May 1984, with effect from 1 July 1983. The Applicant contends it was Mr. Dell's wish that he should ask the Panel on Discrimination to withdraw its report on his case in exchange for the implementation of his promotion. Mr. Dell denied this allegation.

On 1 December 1984, the Applicant was granted a permanent appointment.

On 3 February 1986, the Assistant Secretary-General, OPS, asked all Heads of Departments and Offices to provide him with their recommendations for promotion to be considered by the APB in connection with the 1986 promotion review exercise.

According to the record of the case, in March 1986, there were two D-1 posts in each of the two divisions of UNCTC (Advisory and Information Services Division (AISD) and Policy Analysis and Research Division (PARD)), where the Applicant was assigned. A vacant D-1 post in AISD was encumbered by a staff member at the P-5 level, Mr. Odle. At a meeting held on 11 March 1986, to review recommendations for promotion by the Department, Mr. Odle was recommended for promotion to the D-1 level. Five years of seniority at the P-5 level were normally required for such a promotion under the relevant rules. The Applicant, who at the time of the preliminary departmental promotion review had only three years of seniority at the P-5 level was not recommended for accelerated promotion.

The 1986 promotion review exercise was postponed on account of the financial crisis affecting the Organization at the time and was not recommenced until early 1987.

In the meantime, in November 1986, Mr. Kawamura, a UNCTC staff member encumbering one of the above-mentioned D-1 posts at PARD was transferred to another Department. The Applicant expressed his interest in the post verbally and in writing, to Mr. Peter Hansen, then Executive Director of UNCTC.

A vacancy announcement was issued by UNCTC to advertise the post since it was evidently contemplated that appointment to this D-1 post would be made in accordance with the new procedures in force concerning the Vacancy Management System. On 29 December 1986, the Applicant wrote to the Assistant Secretary-General, OPS, concerning the vacancy announcement. He asserted that he had noticed a number of changes from an earlier vacancy announcement, indicating that the new one had been rewritten to "conform with someone's profile". He added that this was the third time in five years that UNCTC had modified job descriptions to prevent his promotion.

In a memorandum dated 12 January 1987, the Executive Director informed the Assistant Secretary-General, OPS, that after reviewing the qualifications of all candidates who had applied for the position through the Career Development and Placement Unit (CDPU), he had considered that the two most qualified candidates for the post were Mr. Sylvanus A. Tiewul and Ms. Sok-Chun Tang. Although both had "an excellent background and several years of experience in legal research and work", he had decided to select Mr. Tiewul.

On 5 February 1987, the Applicant wrote a letter, incorrectly dated 5 February 1986, to the APB, stating that he believed Mr. Tiewul had not accepted UNCTC's offer and asking the Board to consider him for promotion to the D-1 post, for which he had applied and was deemed qualified by the CDPU, but for which he had not been selected by the Head of his Department.

Procedures for commencement of the delayed 1986 promotion review exercise were set in motion in February 1987. The Assistant Secretary-General for Human Resources Management* (OHRM), issued guidelines for the review on 19 February 1987, and transmitted them to Mr. Peter Hansen, the Executive Director of UNCTC, who was also Chairman of the APB.

---

* Successor of OPS.

On 12 March 1987, the Executive Director, UNCTC, wrote to the Assistant Secretary-General, OHRM, recommending Ms. Sok-Chun Tang for promotion to the D-1 level against the post that had been vacated and previously advertised under the Vacancy Management System.

In the meantime, the Applicant had filed a second complaint with the Panel on Discrimination. On 27 March 1987, the Co-ordinator of the Panel transmitted to the Assistant Secretary-General, OHRM, the Panel's report. The Panel concluded that there were "sufficient grounds to make a reasonable inference to the effect that a systematic pattern of unfair treatment or discrimination against Mr. Fayache has, and continues to be perpetrated by UNCTC...". It recommended that the Applicant be placed against the vacant D-1 post and promoted to the D-1 level.

On 30 March 1987, the Applicant wrote to the APB, transmitting the report of the Panel on Discrimination. In his communication, he challenged the validity of the recently issued APB guidelines with respect to affirmative action efforts for considering women for promotion and stated that, as the guidelines had been introduced to correct past discrimination against female staff, the rationale for their existence would be defeated if their application resulted in reverse discrimination against him.

On 17 June 1987, the Assistant Secretary-General, OHRM, announced to the staff in information circular ST/IC/87/34 the 1986 D-1 Principal Officer Promotion Register, containing names of staff whose inclusion therein had been approved by the Secretary-General, upon the recommendation of the APB. The Applicant's name was not on the Register. On 25 June 1987, the Applicant instituted a recourse procedure against the decision not to include his name in the Register. On 21 January 1988, the Applicant informed the APB that a further D-1 post would become vacant in UNCTC. On 6 April 1988, the Chairman of the APB informed the Applicant that his recourse was unsuccessful.

On 31 May 1988, the Applicant requested the Secretary-General to review the administrative decision not to include his name in the 1986 D-1 Promotion Register. Not having received a reply, on 12 July 1988, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 5 September 1989. Its conclusion and recommendation read as follows:

Conclusion and Recommendation

63. In light of the above considerations, the Panel concluded that it could find no fault with the contested decision.

64. The Panel, therefore, makes no recommendation in support of the appeal."

On 12 September 1989, the Acting Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the Board's report and informed him that the Secretary-General having re-examined his case in the light of the Board's report, had decided to maintain the contested decision and to take no further action on his case.

On 7 December 1989, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent abused his discretionary power in redrafting a vacancy announcement to ensure promotion of a specific staff member.

2. By opposing staff members from the same geographic area as the Applicant, the Respondent violated Article 101, paragraph 3 of the UN Charter. Furthermore, the Respondent ignored General Assembly resolution 41/206(A), paragraph 5, concerning representation of developing countries in senior and policy-making posts "with due respect to equitable geographic composition".

3. The Applicant was the subject of reverse discrimination, his female competitor for the post in question having unnecessarily and unfairly benefitted from efforts to correct some of the inequities affecting women in the UN, through the APB guidelines of 19 February 1987.

4. The APB failed (a) to note that no departmental review took place, (b) to request up-to-date performance evaluation reports for the Applicant and his female competitor for the post, and (c) to insist that the UNCTC Executive Director recuse himself from the APB proceedings on grounds of conflict of interest.

Whereas the Respondent's principal contentions are:

1. The Applicant has no right to promotion.

2. The Applicant was accorded his right to due consideration.

3. Job descriptions and vacancy announcements are within the discretionary power of the Respondent and they may be rewritten according to the changing needs of the service.

4. The non-submission of up-to-date performance evaluation reports is not an infraction of due process.

5. The Panel on Discrimination is an advisory body whose recommendations are not binding upon the Administration.

6. The composition of the APB was proper.

7. The accelerated promotion of qualified and deserving women candidates is a valid exercise of administrative discretion to ensure equal representation of women at higher levels of the Secretariat.

8. Staff members do not have acquired rights to any given system of seniority calculation.

The Tribunal, having deliberated from 11 October to 2 November 1990, and from 19 February to 27 February 1991, now pronounces the following judgement:

I. In this case, the Applicant appeals to the Tribunal from an adverse decision of the Secretary-General dated 12 September 1989. A report by the Joint Appeals Board (JAB) dated 5 September 1989, made no recommendation in support of the appeal. Several issues are presented for examination by the Tribunal; all relate to the Applicant's claim that he was unfairly treated in connection with his efforts to be assigned to a D-1 post and to be promoted to that level from P-5.

II. Insofar as the D-1 post in question is concerned, the Applicant claims that there was impropriety on the part of the Administration in changing the description of the post from the manner in which it had been described a few years earlier. The Applicant alleges that the change was

motivated solely by a desire of the Executive Director of the United Nations Centre on Transnational Corporations (UNCTC) to favor a particular candidate from outside UNCTC and that, had the job description remained unchanged, the Applicant would have been the best qualified candidate within UNCTC. It goes without saying that such manipulation of a job description, if found to have occurred, would involve serious misconduct. In this case, although the Applicant's concerns are understandable, given the surrounding circumstances, there is evidence that the small change in the job description was related to the nature of the post and its historical evolution. In fact, the Applicant's interests were, in the end, not harmed by the change. During procedures for filling the D-1 post in question, the Applicant was one of a relatively small number of candidates deemed qualified for consideration and he was considered though not found to be the best qualified. The Tribunal rejects the post description aspect of the Applicant's claims.

III. The Tribunal agrees with the Applicant's contention that the Vacancy Management System was not applicable to his efforts to be considered for the D-1 post in question. However, as a result of administrative confusion at the time, he was considered under the Vacancy Management System and the Promotion Register System.

IV. The Applicant was considered for the D-1 post within the framework of the Promotion Register System, in connection with the 1986 promotion review. That review commenced on 3 February 1986, but actually extended well into 1987, with the Promotion Register resulting from recourses being published in 1988. The Applicant claims and the Respondent has admitted that not all of the required procedures under the 1986 guidelines were followed in connection with events that occurred during the 1986 promotion exercise with respect to the D-1 post in question. The Respondent attributes this to confusion which existed at the time because both the Vacancy Management System and the Promotion Register System were being followed, but this is not an excuse for failure to observe important procedural protections for staff members in connection with the promotion process.

V. Among other things, the 1986 guidelines applicable to the 1986 promotion review called for an internal departmental review in the first instance of all prospective candidates for promotion. This review was supposed to include a staff representative. The Respondent has conceded that no such internal departmental review took place with respect to the D-1 post in issue. The Tribunal has emphasized in the past the importance of adherence by the Administration to the rules governing the promotion process. Those rules provide safeguards of considerable value to the staff and non-compliance with them by the Administration is frequently regarded by the Tribunal as more than a minor irregularity.

VI. In the present case, there was still another failure on the part of the Administration to comply with required procedures. Under the applicable rules, a performance evaluation report with respect to the Applicant should have been prepared upon the departure from UNCTC of Mr. DeGaspar, who was the Applicant's first reporting officer until the Fall of 1986, and Mr. Kawamura, who succeeded him until the latter part of 1986. This was not done. Hence, when the Applicant was considered for the D-1 post in the 1986 promotion review, his most recent performance evaluation report related to a period ending in 1984. While this performance evaluation report would have been adequate for promotion review purposes had there been no change in the Applicant's first reporting officer, the latters' departures from UNCTC changed the situation. The Applicant did not have whatever procedural protection the performance evaluation report requirement was intended to provide.

VII. The Applicant contends that he was a victim of discrimination on account of his sex because the staff member finally selected for the D-1 post is a female. In this case, the only favourable treatment that was accorded to the female staff member selected for the D-1 post had to do with the calculation of her seniority for the purpose of determining whether she was eligible for consideration for accelerated promotion to the D-1 level. The female selected for the D-1 post would have had less than three years of seniority in grade, but for the application of an averaging technique

authorized by the Secretary-General, with the apparent approval of the General Assembly, as a means of increasing the number of female candidates who might be considered for promotion to higher level positions within the Secretariat. The Tribunal notes that this averaging does not purport to authorize the promotion of females whose relative qualifications or merit are lower than male collaterals and thus does not appear to present any question under Article 101(3) of Chapter XV of the Charter.

VIII. The Applicant attacks the 19 February 1987 guidelines reflecting the affirmative action policy of the Secretary-General on the theory that he was prejudiced by their retroactive application to a post that became vacant in 1986, and that they violate, among other things, Chapter III, Article 8 of the Charter, which states that: "The United Nations shall place no restriction on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs." As the JAB correctly recognized in its report, the Applicant was considered in the context of the Promotion Register System as a collateral of the female who was selected. In the Tribunal's view, it seems clear that consideration of the successful female candidate for accelerated promotion did not constitute gender discrimination against the Applicant, but rather resulted in his being considered for promotion in a situation in which this would not otherwise have occurred. Had she not been considered, the Applicant would not have been entitled to any consideration as part of the 1986 Promotion Review, after the non-UNCTC candidate declined. Consequently, the Tribunal concludes that the Applicant was in no way injured by the seniority calculation technique authorized on 19 February 1987, which allowed the successful female to have her qualifications and merit judged for a post that became vacant in November 1986. Therefore, this case does not present either the issues of sex discrimination sought to be raised by the application, or any question of unfair retroactive application of rules.

IX. The Applicant also asserts that the promotion of the female staff member to the D-1 post was in violation of the General Assembly resolution

dealing with the requirement that staff members being promoted to that level have confirmed knowledge of a second language. There is no merit to this contention. The female staff member involved had confirmed knowledge of a second language. The Tribunal suggests, however, that further consideration be given by the proper authorities to the various aspects of the question of the "mother tongue".

X. The Applicant has also drawn into question the propriety of the proceedings when the issue of his promotion came before the APB. As indicated above, the Applicant's department, though it considered him for the D-1 post in question under the Vacancy Management System, did not recommend him for the post.

XI. When the APB considered UNCTC's recommendations for filling the D-1 post at the 30 March 1987 meeting, the individual serving as Chairman of the APB was both an Assistant Secretary-General and the Executive Director of UNCTC. The latter was aware of the Applicant's interest in the D-1 post before it was considered by the APB and was doubtless also aware from the Panel on Discrimination and Other Grievances (Panel on Discrimination) report dated 27 March 1987, that the Applicant believed himself to be the victim of unfair and discriminatory treatment at the hands of the Executive Director because of the Applicant's Arabic origin.

XII. At three meetings of the APB, the promotion of the female staff member to the D-1 post and the Applicant's recourse were considered. The Executive Director was present at all three meetings. He chaired the first of the meetings and relinquished the chair during the second and third meetings when the Applicant's situation and his recourse were under consideration.

XIII. Against this background the Applicant argues that it was improper for the Executive Director to have participated in or chaired the APB meetings while the D-1 post sought by the Applicant was under consideration. The

Respondent, in disputing this position, relies upon paragraph 3(c) of the APB Guidelines specifying that an APB member "will normally not be expected to withdraw from meetings when cases originating in his [or her] department are under review by the Board". Moreover, the Respondent points out that APB members do not serve as representatives of their departments.

XIV. The JAB felt that it could not fault the Executive Director's decision not to remove himself and, in this regard, the JAB emphasized that the APB has several members, no one of whom has an overriding voice. Although the Tribunal is unable to disagree entirely with the JAB's reasoning, and has no reason to believe that the APB did not consider the Applicant's submissions properly, the Tribunal is persuaded that, because the circumstances of this case as set forth above were abnormal, paragraph 3(c) of the Guidelines does not dispose of the issue as the Respondent argues. An APB member serving as Chairman who is also an Assistant Secretary-General does not stand in quite the same position as other members of the APB. When, as here, there is a pending claim and finding of discrimination involving the staff member concerned, the Tribunal considers that an APB member, particularly an Assistant Secretary-General serving as chairman, should, in the interest of avoiding even an appearance of impropriety, remove himself or herself entirely from the APB meeting while the case is under consideration and should neither participate in it nor attempt to influence any other APB member with respect to it. The views of a staff member's department can be adequately presented to the APB by a department representative who is not an APB member, without in any way injuring the interests of the Administration. Unless such a procedure is followed, it is inevitable that a cloud of suspicion will hang over the functioning of the APB whose very purpose is to provide assurance of adequate consideration and fair treatment with respect to the career development of staff members. Hence, the Tribunal concludes that, to the extent that the Executive Director was present at or participated in APB considerations with respect to the D-1 post and the Applicant's recourse, this constituted insensitive and unfair treatment of the Applicant. While

the Tribunal is by no means convinced that the outcome with respect to the D-1 post would have been different had the Executive Director withdrawn, that is not the point. Procedural unfairness is, in itself, wrong and is to be evaluated in the circumstances of the case in which it is found.

XV. The Tribunal turns now to the question of whether discrimination against the Applicant because of his Arabic origin was the motivating reason underlying his non-selection for the D-1 post. Despite the 27 March 1987 report of the Panel on Discrimination which concluded "that there are sufficient grounds to make a reasonable inference to the effect that a systematic pattern of unfair treatment or discrimination against [the Applicant] has, and continues to be perpetrated by UNCTC...", the Tribunal is not convinced that the evidence regarding the D-1 post establishes that, but for the discrimination apparently inferred by the Panel, the Applicant would have been selected for that post or promoted to the D-1 level. The JAB considered the same allegations of discrimination that were the subject of the 27 March 1987 report of the Panel. On the evidence before it, the JAB reached the opposite conclusion. It found reasonable explanations with respect to items of alleged discrimination and declined to draw the same inferences as the Panel. Having reviewed the circumstances and the evidence before it, the Tribunal is inclined to agree with the JAB, and in this connection takes into account the improbability of different supervisors being motivated only by bias against the Applicant in the allegedly wrongful continuous pattern of administrative conduct that the Applicant asserts with respect to his career.

XVI. It has been suggested that even though there may be no direct proof of the alleged discrimination, retaliation against the Applicant was alleged with respect to the 1983 Panel on Discrimination report and that there was a "climate of discrimination" against persons of Arabic origin in UNCTC. The Tribunal is unable to find from the evidence that there was any such retaliation. But, the Applicant (and perhaps others) had a perception of a "climate" of discrimination within UNCTC and it is regrettable not only that such a perception should be held, but that it should be permitted to fester

over a long period of time. It is surely desirable that the Administration do what it reasonably can, by word and by deed, to dispel such perceptions. For if they are ignored and not dealt with expeditiously, fundamental values of the Organization are apt to be eroded.

XVII. All of the foregoing brings into focus what the Tribunal finds to be still another irregularity on the part of the Administration. The Tribunal agrees with the JAB's views in its report that the Respondent's two-year delay, as well as the nature of his reaction to the Panel on Discrimination's report, was seriously deficient. This, in the Tribunal's view, also amounted to unfair treatment of the Applicant. If the Panel on Discrimination is to continue to serve the valuable purposes for which it was established and to carry out its mission effectively, it is essential, as the Tribunal indicated in Judgement No. 401, Upadhya (1987), that the Respondent react with reasonable promptness to the Panel on Discrimination reports regardless of whether it agrees or disagrees with them. If the latter, the Respondent should either pursue the matter further with the Panel on Discrimination or explain fully its reasons for declining to accept the Panel on Discrimination's recommendations. If the former, the Respondent should promptly so inform the staff member and should take appropriate action as soon as reasonably possible. The Tribunal finds unacceptable the Respondent's contention that the persons in the Administration responsible for dealing with this matter were so busy with other things that it "slipped between the cracks" and was not addressed for two years. However accurate that description may be, it does not constitute an excuse. If it did, Panel on Discrimination reports could well become exercises in futility and the existence of the Panel on Discrimination merely an empty promise.

XVIII. The Tribunal can understand that the Applicant might have concerns about apparent coincidences between the present case and a case involving another staff member which led to two judgments of the Tribunal before it was resolved. While it may be true, as the Applicant argues, that it is difficult to prove claims of invidious ethnic discrimination or of retaliation for having asserted such claims, that, in itself, does not justify lowering the

required standard of proof to the point where equivocal, vague, or insubstantial evidence is sufficient to warrant a finding of this sort of serious misconduct. There is a vast difference between cases of such misconduct and cases in which supervisors simply do not share a staff member's evaluation of his own qualifications, performance or merit, or in which there is disharmony between supervisors and a staff member for a variety of reasons having nothing at all to do with unlawful discriminatory attitudes, or in which supervisors do not have the same views as a staff member relating to the priority of projects or to the way in which the business of their departments should be managed. With this in mind, the Tribunal observes that the usefulness of reports of the Panel on Discrimination would be greatly improved if, at a minimum, they explained in reasonable detail the nature and dates of the conduct complained of and the events being investigated, what the investigation consisted of, the contentions of the parties and the evidence submitted in support thereof, the conclusions of the Panel and the reasons and considerations underlying the Panel's conclusions. This would aid the Administration and this Tribunal in evaluating such reports, and, hopefully, also in determining whether proper or improper exercises of managerial discretion are being labeled as unlawful discrimination. Unfortunately, neither the 1983 nor the 1987 Panel on Discrimination's reports contained these details.

XIX. In view of the irregularities discussed above, which taken together in the circumstances of this case constitute unfair treatment, the Tribunal finds that the responsibility of the Organization is engaged. The Tribunal fixes as compensation for the injury sustained by the Applicant the sum of US$5,000. The Tribunal, having accepted the assurance of the Administration that there never was and is not now any intention to discriminate unlawfully against the Applicant, expects that neither his appeal in this case nor his submissions to the Panel on Discrimination will adversely affect his future career and that he will be considered fairly for such career advancement as he may be qualified for as provided under the applicable Staff Rules and Regulations.

XX. The Tribunal orders that:

1. The Respondent pay to the Applicant the sum of US$5,000.
2. All other pleas are rejected.

(Signatures)

Roger PINTO
President

Jerome ACKERMAN
First Vice-President

Ahmed OSMAN
Second Vice-President

New York, 27 February 1991

R. Maria Vicien-Milburn
Executive Secretary

best copy
available